

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED OF OMAHA LIFE INSURANCE
COMPANY,

Plaintiff,

v.

KEITH A. BROWN, *et al.*,

Defendants.

Case No. 2:22-cv-00913-MMD-NJK
AMENDED ORDER

Plaintiff United of Omaha Life Insurance Company initiated this interpleader complaint under Federal Rule of Civil Procedure 22, seeking to interplead death benefits in the amount of \$10,000.00 ("Death Benefits") under a life insurance policy it issued because of adverse claims to the Death Benefits by Defendants Keith A. Brown and Azia D. Brown. (ECF No. 1 ("Complaint").) The Court previously granted Plaintiff's motion to deposit the Death Benefits, dismiss Plaintiff from the action, and award and deduct reasonable costs and attorneys' fees for bringing this action from the funds to be deposited, leaving \$6,611.25 in remaining Death Benefits deposited with the Court. (ECF Nos. 20, 22, 23, 24.) The Court instructed Defendants that the proper procedure for resolving their adverse, mutually exclusive claims to the Death Benefits is to file a motion for disbursement of funds with evidentiary support to prove that they are entitled to the Death Benefits. (ECF No. 20 at 3; ECF Nos. 26, 27.) Before the Court are Keith Brown's motion for disbursement of funds (ECF No. 28) and Azia Brown's motion for disbursement of funds (ECF No. 29).¹ The Court makes the following findings of fact and conclusions of law to determine that Keith Brown is solely entitled to the Death Benefits.

¹Because Defendants, proceeding *pro se*, filed competing motions for disbursement of funds only after the Court reminded them of the need to seek

1 In February 2009, Mae R. Brown (“Decedent”) applied for life insurance with United
2 of Omaha; Decedent’s application did not list any beneficiary. (ECF No. 29 at 3, 25; ECF
3 No. 1 at 2.)² On February 23, 2009, United of Omaha issued whole life insurance policy
4 number UR1734291 to Decedent (the “Policy”). (ECF No. 1-1.)

5 Keith Brown is Decedent’s son (ECF No. 28 at 1), Tyrese Brown is Decedent’s son
6 (ECF No. 29 at 2), and Azia Brown is Tyrese Brown’s daughter and Decedent’s
7 granddaughter (*id.*). On March 21, 2011, Decedent submitted a written request to United
8 of Omaha to make Keith the beneficiary of the Policy. (ECF No. 1-2.) On June 1, 2021,
9 Tyrese submitted an Application for Change of Beneficiary to United of Omaha, which
10 changed the beneficiary of the Policy from Keith to Azia. (ECF No. 1-3.) Tyrese signed
11 the Application as Decedent’s attorney-in-fact and submitted a durable financial power of
12 attorney form (the “POA”) to United of Omaha. (*Id.*; ECF No. 1-4; ECF No. 1 at 2.)³ The
13 POA had been executed on March 5, 2019 in Nevada and granted Tyrese with the power
14 to “modify, exchange, rescind, release, or terminate” insurance contracts entered into by
15 Decedent. (ECF No. 1-4 at 7, 12, 14). Decedent passed away on June 11, 2021. (ECF
16 No. 1-5.) As a result of Decedent’s death, the Death Benefits became due to any
17 beneficiaries.

18 Absent any challenges to the validity of the POA or the beneficiary change, Azia
19 would appear to have the sole right to the Death Benefits as the named beneficiary at the
20 time of the Decedent’s passing. However, Keith challenges the validity of both (ECF No.
21 28 at 1), and the Court addresses each argument in turn.

22
23
24 disbursement of funds and to offer evidence to support their request, and given their delay
25 in properly moving for disbursement, the Court finds it proper to resolve the competing
motions without further briefing.

26 ²Keith appears to contend that he was listed as a beneficiary on the February 2009
27 application (ECF No. 28 at 1), but the evidence tends to show that he was not added as
a beneficiary until March 2011 (ECF No. 1-2).

28 ³Azia’s motion includes a copy of the POA (ECF No. 29 at 10-22), but the Court
cites to the identical copy of the POA submitted with the Complaint (ECF No. 1-4)
throughout this order for ease of reference.

1 First, Keith appears to contend that the POA was invalid but presents no evidence
2 or argument to support his contention. (*Id.*) “A power of attorney must be signed by the
3 principal or, in the principal’s conscious presence, by another individual directed by the
4 principal to sign the principal’s name on the power of attorney.” NRS § 162A.220(1). “A
5 signature on a power of attorney is presumed to be genuine if the principal acknowledges
6 the signature before a notary public or other individual authorized by law to take
7 acknowledgments.” *Id.* Generally, “a photocopy or electronically transmitted copy of an
8 original power of attorney has the same effect as the original power of attorney.” NRS §
9 162A.230(4). Here, the POA was signed by the Decedent, and the signature was
10 acknowledged before a notary public. (ECF No. 1-4 at 12, 14.) As the POA complies with
11 NRS § 162A.220, the Court finds that it is valid. See NRS § 162A.230 (“A power of
12 attorney executed in this State on or after October 1, 2009, is valid if its execution
13 complies with NRS § 162A.220.”).

14 Next, Keith challenges the beneficiary change, arguing that the Decedent did not
15 request the change and that there was a conflict of interest with Tyrese naming Azia as
16 beneficiary, given their familial relationship and that they reside in the same household.
17 (ECF No. 28 at 1.) Without needing to decide whether there was a conflict of interest, the
18 Court finds that, under Nevada law, the POA did not grant Tyrese specific authority to
19 change the beneficiary designation of the Policy on behalf of the Decedent. Under NRS
20 § 162A.450(1)(d), “[a]n agent under a power of attorney may [create or change a
21 beneficiary designation] on behalf of the principal or with the principal’s property only if
22 the power of attorney expressly grants the agent the authority.” The POA does not contain
23 express language granting Tyrese the specific authority to “create or change a beneficiary
24 designation.” (See ECF No. 1-4.) As to insurance contracts, the POA only contains
25 language consistent with a granting of general authority under NRS § 162A.540, which
26 standing alone cannot confer specific authority required to change a beneficiary
27 designation. *Compare* NRS § 162A.450 (grant of specific authority) *with* NRS § 162A.460
28 (grant of general authority); see NRS § 162A.540(1) (stating that “language in a power of

1 attorney granting general authority with respect to insurance and annuities authorizes the
2 agent to . . . modify, exchange, rescind, release or terminate a contract procured by or on
3 behalf of the principal which insures or provides an annuity to either the principal or
4 another person"); see *also* NRS § 162A.620 (distinguishing "grant of general authority"
5 from "grant of specific authority," including to "create or change a beneficiary
6 designation").

7 Accordingly, the Court finds that because the POA did not grant Tyrese specific
8 authority to change the beneficiary designation of the Policy on behalf of the Decedent
9 under Nevada law, the change of beneficiary designation from Keith to Azia was invalid.
10 Thus, Keith is the rightful beneficiary of the Policy and is solely entitled to the Death
11 Benefits.


12 It is therefore ordered that Defendant Keith A. Brown's motion for disbursement of
13 funds (ECF No. 28) is granted.

14 It is further ordered that Defendant Azia D. Brown's motion for disbursement of
15 funds (ECF No. 29) is denied.

16 The Clerk of Court is directed to disburse the Death Benefits deposited with the
17 Court in the amount of \$6,611.25 (see ECF Nos. 23, 24), plus accrued interest on the
18 amount, to Keith A. Brown, 11221 Apple Valley Drive, Frisco, Texas 75033.

19 The Clerk of Court is further directed to enter judgment accordingly and close this
20 case.

21 DATED THIS 22nd Day of May 2024.

22 
23 _____
24 MIRANDA M. DU
25 CHIEF UNITED STATES DISTRICT JUDGE
26
27
28